
(1982) 02 OHC CK 0023
In the Orissa High Court
Case No : S.J.C. No's. 173 and 174 of 1977

State of Orissa

APPELLANT

Vs

Muralimanohar Prabhudayal

RESPONDENT

Date of Decision : 04-02-1982

Acts Referred:

Orissa Sales Tax Act, 1947 — Section 24(1)

Citation : (1983) 52 STC 35

Hon'ble Judges : R.N. Misra, C.J.;B.K. Behera, J

Bench : Division Bench

Advocate : B.K. Mohanty, K.K. Rath, P.K. Misra and R.L. Bose, for the Respondent

Judgement

R.N. Misra, C.J.—At the instance of the revenue, the Member, Additional Sales Tax Tribunal, has referred the following questions for opinion of the court u/s 24(1) of the Orissa Sales Tax Act, 1947 :

(1) Whether, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, is correct in law to have held that confronted facts became untested material for want of warning to the assessee that they are to be used in his assessment ?

(2) If the answer to question No. (1) is in the negative, whether it is permissible in law to sustain the enhancement of the turnover of Rs. 30,000 as was done by the assessing officer ?

The two reference applications relate to the periods 1972-73 and 1973-74. The assessee is a registered dealer under the Orissa Sales Tax Act, 1947, and has his business in cloth and hosiery articles on wholesale basis in Bhadrak in the district of Balasore. In the course of assessment for these periods, the Sales Tax Officer found:

. . . . It was reported by the Investigation Unit of the Intelligence Wing, Balasore, that on their verification of the seized documents of M/s. Mannalal Prabhudayal,

Chandan Bazar, Bhadrak," it was detected that the dealer (M/s. Muralimanohar Prabhudayal) had received Rs. 4,000 on 7th May, 1973, which had not duly been taken into account by him. As per their report, the cash transaction between both the wholesalers represents their clandestine business. This was confronted to the partner, Sri Hazarimal Mahawar and he denied to have received Rs. 4,000 on 3rd January, 1973. Such cash transactions are also revealed among (between) both the wholesalers on 1st March, 1973, and 05th March, 1973. The personal ledger account maintained by this dealer in the name of the other wholesaler for the Dewali year 1972-73 shows nil balance. The contention of the partner is not acceptable because when the payment made by M/s. Mannalal Prabhudayal represents his uchhanti business, it is not expected that the receipt thereof will be accounted for by this dealer. The reported transaction is not a singular instance to be considered. The dealer has regular business relationship (purchase and sale) besides in short-term cash loans. All these things satisfy the assessing officer to hold that the receipt of Rs. 4,000 on 7th May, 1973, from the wholesaler has been kept out of his account intentionally . . .

The accounts were rejected and the assessment was completed to the best of the judgment of the assessing officer and enhancements were directed both in the gross as also the taxable turnovers. The assessee's first appeals failed to bring any relief. The second appeals of the assessee were, however, allowed by the Member, Additional Sales Tax Tribunal, with the following findings :

. . . . In view of the argument, the only point for consideration is whether the appellant has been confronted with the materials that were found from the accounts of the other dealer regarding the appellant's transaction dated 7th May, 1973. In this connection, the statement recorded from the appellant's partner at the time of assessment is relevant:

"The Sales Tax Officer read out the statement of Sri Mannalal Gupta, the partner of M/s. Mannalal Prabhudayal dated 7th May, 1973, regarding his payment of Rs. 4,000 to our firm on 7th May, 1973. My accounts do not reveal the receipt of Rs. 4,000 on the said date. But the ledger accounts of that firm revealed payment of Rs. 4,000 to my firm on 4th January, 1973, against his cash loan of Rs. 4,000 on 3rd January, 1973. The said firm usually purchases goods from my firm and sometimes takes cash loans. Similarly on 1st March, 1973, the said firm has taken loan of Rs. 2,500 from my firm, which has been repaid on 5th March, 1973. The report of the Inspector of Commercial Taxes was read out and I have nothing more to say. I have not received Rs. 4,000 from that firm on 7th May, 1973.

These will go to show that the statement that was recorded by the Inspector from the partner of M/s. Mannalal Prabhudayal was stated to the appellant's partner and the appellant's partner denied the same. There is nothing on record to indicate that the assessing officer gave warning to the appellant that he would utilise the statement of Mannalal against him in the matter of assessment.

Had that been done, the appellant would have expressed his desire to cross-examine Prabhudayal. That will go to show that the appellant was only asked as to whether he had transactions, to which he denied. In view of that, the materials collected have not been properly utilised. Hence the same cannot be the justification to reject the accounts of the appellant specially when they were suppressed transactions of Mannalal Prabhudayal.

The controversy in this case arises in this background.

2. The learned standing counsel contends that the assessee was entitled to notice of the material collected by the revenue and when the matter was confronted to the assessee's partner, the requirements of natural justice were completely satisfied. There is no necessity beyond confrontation to give any specific notice to the assessee that the assessing officer intended to utilise the material so collected against the assessee. On the other hand, the counsel for the assessee placing reliance on three decisions of this Court to which we shall presently make reference contends that in the circumstances as present here the assessing officer has two obligations, namely, (i) to put the assessee to notice of the information collected and (ii) also to give notice to the assessee that he has the intention of utilising such material against him. In *Muralimohan Prabhudayal v. State of Orissa* [1970] 26 STC 22, which was a case of the present assessee, two questions had been referred for opinion of this Court, namely :

(1) Whether the taxing officers are precluded from making a fair and reasonable guess about the rate of profit if the same is found to be low on a consideration of the local conditions though the accounts as maintained are found to be correct ? and

(2) Whether, in the facts and circumstances of the case, the estimation of profit rate as made is justified or is arbitrary based on surmises and conjectures ?

The court referred to the case of (1944) 12 ITR 393 and the four propositions which had been laid down there. The fourth proposition which is relevant was to the following effect :

In case he (assessing officer) proposes to use against the assessee the result of any private enquiries made by him, he must communicate to the assessee the substance of the information so proposed to be utilised to such extent as to put the assessee in possession of full particulars of the case he is expected to meet and should further give him ample opportunity to meet it, if possible.

Dealing with this proposition, the court observed :

It is the amplitude and ambit of this fourth proposition which needs examination. There cannot be any controversy that the assessee can adduce independent evidence of his own to disprove the particulars proposed to be used against him. The question is : whether he can have the right of cross-examination in certain circumstances.

and in the rest of the judgment the court considered that aspect only. From this analysis of the decision it is clear that there is nothing very material available for being used in favour of the assessee from it.

The next case relied upon on behalf of the assessee is that of Ram Chandra Maikap v. State of Orissa (1972) 2 CWR 1913. A Bench of this Court quoted with approval the principle laid down in (1944) 12 ITR 393 , where it was observed :

. . . . The very nature of the proceedings conducted by him (income tax Officer) necessitates the use of such media for collecting information as he may not like to disclose to the assessee and he is perfectly within his right if on enquiry by the assessee he refuses to disclose the source of his information. But if he makes up his mind to reject the evidence of the assessee on any grounds which appeal to him to be sufficient for that purpose, it is but fair and just that he should acquaint the assessee with those grounds so as to enable him to disabuse v his mind, if possible, by explaining them away as baseless or untenable.

This Court in the said reported decision ultimately indicated :

. . . . To a case of this type the following in our opinion would be applicable:

- (1) The assessee has to be informed about the materials against him together with a statement of the allegations on which they were based;
- (2) He should be given a reasonable opportunity of stating his own case ;
- (3) If the assessee demands that the witness reporting against him should be cross-examined by him, ordinarily such opportunity has to be granted ;
- (4) The taxing authority would consider the entire material placed on the record and complete the assessment in good faith.

Here again, therefore, there was no indication that the assessee should be put to notice that the material which was being confronted was going to be utilised against him in the assessment proceeding.

The last case on which the assessee's counsel relies is that of Commissioner of Sales Tax, Orissa v. Ramanarayan Sitaram [1976] 37 STC 591 (ori). Two questions had been referred to the court for its opinion and the first one which is relevant was to the following effect:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that in the absence of the examination of the Inspector to support his report, the books of the assessee could be discarded once the assessee took the stand that there had been no detection ?

In paragraph 7 of the judgment, after referring to Ram Chandra Maikap's case (1972) 2 CWR 1913, it was observed :

In Banwarilal Sitaram v. State of Orissa 1974 Tax LR 1960, a Division Bench of this Court has also held that the assessing authority is bound to disclose to the

assessee any material collected by him which is adverse to the assessee and he is going to utilise the same against the assessee. The assessee is expected to meet such adverse material and thereby save himself from any adverse assessment. . . .

In Banwarilal Sitaram's case [1976] 37 STC 59(ORI), this Court observed :

Law is settled beyond doubt that the strict principles of the Evidence Act do not apply to an assessment proceeding. The assessing officer is entitled to collect materials behind the back of the assessee and even not disclose the source to the assessee in all cases, but he is bound to disclose to the assessee any material adverse to the assessee in his possession, which he is going to utilise against the assessee in the assessment.

None of the cases on which the assessee's counsel relies casts the obligation on the assessing officer to put the assessee to notice that he is going to utilise the material against the assessee. The content of natural justice in a case of this type is to disclose the material to the assessee by way of confrontation. In Banwarilal's case [1976] 37 STC 59 the statement "which he is going to utilise against the assessee in the assessment" was intended to highlight the fact that the adverse material which the assessing officer was going to utilise against the assessee was to be disclosed and not that the assessee was to be put to notice that the material was going to be utilised. The content of natural justice is in apprising the assessee of the material available. The fact that such material is being confronted to the assessee is sufficient to put him to notice in an appropriate way and then would arise his obligation to place materials before the assessing officer with a view to disabusing his mind, if possible, as indicated in the (1944) 12 ITR 393 . We are not prepared to accept that there is any obligation on the assessing officer to put the assessee to notice that he is going to utilise the adverse material against him.

3. Admittedly, there had been confrontation and once there has been disclosure of the material, the rules of natural justice must be taken to have been satisfied and the action of the assessing officer cannot be called in question for want of notice to the assessee that such material was going to be utilised against him. The Tribunal clearly went wrong in culling out from the reported decisions such a requirement. Once the rules of natural justice were found to have been satisfied, the accounts were liable to rejection and the assessing officer was entitled to make a best judgment assessment. The first question has; therefore, to be answered against the assessee and we would hold that, on the facts and in the circumstances of the case, the Member, Additional Sales Tax Tribunal, was wrong in law to have held that the confronted facts became untested material for want of warning to the assessee that they were going to be used in the assessment.

4. Once the answer in respect of the first question is against the assessee, the second question does not arise for consideration.

The parties are directed to bear their own costs of these references.

B.K. Behera, J.

I agree with my Lord, the Chief Justice.